

REMARKS

Claims 1-20 are pending with this paper. Claims 1-19 stand rejected by the Office Action. Applicant is adding new claim 20. Applicant requests reconsideration of the claims based on at least the arguments herein.

New Claim

Applicant is adding claim 20 to include the feature of “independently preempting the backdrop programming for a different local area.” The above feature is supported by the specification as originally filed, *e.g.*, page 4, lines 3-17. No new subject matter has been added.

Claim 20 is dependent from claim 1 and is patentable for at least the reasons as will be discussed. Moreover, while alleged that Podar “teaches that local content preempts national content” (at page 6), Podar fails to even suggest “independently preempting the backdrop programming for a different local area.”

Claim Rejections - 35 U.S.C. §103

Claims 18-19 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over U.S. Publication No. 2004/0255333 (Kenworthy) in view of U.S. Patent No.7,549,160 (Podar).

Regarding independent claim 18, Kenworthy and Podar, either individually or in combination, fail to suggest the feature of “responsive to determining that the locally produced programming is available and intended for local transmission, **unconditionally** preempting the backdrop programming and providing the locally produced programming on the channel.” (Emphasis added.) The Office Action alleges (Pages 3-4. Emphasis added.):

On the other hand, Kenworthy does not explicitly teach the preempting of the backdrop programming is unconditional and that it is in response of the determination of the availability of the locally produced content. However, in an analogous art, Podar teaches a distribution system that provides video content to the end users (subscribers, col. 2 lines 47-58). **Podar teaches that local content** (channels or content that spotlight local cultural events, local news, and other local activities, col. 2 lines 61-64; col. 3 lines 36-48) **preempts national content** (col. 2 lines 56-67). It is inherent that for the local content to preempt national content, it must exist or be available. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have

modified Kenworthy's invention with Podar's feature of unconditionally preempting local content to content received from a national headend for the benefit of presenting and promoting locally produced content of general interest to population in a given region or zone.

Referring to Podar, it recites (Column 2, line 47-column 3, line 2. Emphasis added.):

FIG. 1 illustrates a communication system 10 in accordance with one embodiment of the present invention. In this embodiment, service and/or content providers provide video services to users through multicast channels to which access is controlled to allow the providers to bill for premium content. Accordingly, some content such as basic network television channels will always be available to users free of charge, but content such as pay-per-view and premium channels are controlled to retain their value as a source of potential revenue. Other services such as Webcam, local, or other special interest group channels may be controlled for privacy and security reasons. Accordingly, service and other providers can deliver differentiated, community or other group-focused services with specific channels as part of a multicast service offering. In providing services, providers can employ content switching mechanisms to replace programming options. For example, a local news program can preempt or replace national programming. It will be understood that in addition to video, audio, data and/or combinations of content types may be provided to users through the access controlled multicast channels. Audio may be radio, music channels or audio-only training materials. Data content can be stock quotes, software distribution and the like.

However, Podar merely discusses that local news can preempt national programming.¹ Podar merely teaches that local news conditionally preempts national programming, in which it is possible to preempt programming. However, preemption, as taught by Podar, is not a certainty.

Independent claim 19 includes the similar feature of “responsive to determining that the locally produced programming is available and intended for local transmission in a particular local area having the channel, unconditionally preempting the backdrop programming and providing the locally produced programming on the channel in the particular local area.” Consequently, claim 19 is patentable for at least the above reasons. Applicant requests reconsideration of claims 18 and 19.

¹ While Podar does not provide a special meaning to *can*, a common meaning of *can* is “Used to indicate possibility or probability: *Such things can happen*. (The American Heritage College Dictionary, Third Edition, Houghton Mifflin Company.)

Claims 1-17 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Kenworthy in view of Podar in further view of US Publication No. 200610041921 (Hane).

Regarding claim 1, Kenworthy and Podar, either individually or in combination, fail to suggest the feature of “responsive to determining that the locally produced PEG programming is available and intended for local transmission, unconditionally preempting the backdrop programming and providing the locally produced PEG programming on the PEG channel” for at least the reasons discussed above. Moreover, while Hane discusses remotely controlling an input source selection at a receiving device to provide for an integration of local and national broadcast signals, Hane does not remedy the deficiencies of Kenworthy and Podar. Independent claim 8 includes the similar feature of “responsive to determining that the locally produced PEG programming is available and intended for local transmission in a particular local area having the PEG channel, unconditionally preempting the backdrop programming and providing the locally produced PEG programming on the PEG channel in the particular local area.” Similarly, independent claim 15 includes the feature of “responsive to determining that the locally produced content is available and intended for local transmission, unconditionally preempting the backdrop programming and providing the locally produced content on the channel.” Moreover, claims 2-7, 9-14, and 16-17 ultimately depend from claims 1, 8, and 15, respectively, and are patentable for the above reasons as well as the additional recited features. Applicant thus requests reconsideration of claims 1-17.

All rejections have been addressed. Hence, it is respectfully submitted that the present application is in condition for allowance, and a notice to that effect is earnestly solicited.

Respectfully submitted,

Date: January 4, 2011

/Kenneth F. Smolik/
Kenneth F. Smolik
Registration No. 44,344
BANNER & WITCOFF, LTD.
10 S. Wacker Drive, Suite 3000
Chicago, IL 60606-7407
Telephone: 312-463-5000
Facsimile: 312-463-5001